

REMARKS

In response to the Office Action mailed July 9, 2009, the Applicant respectfully requests that the Examiner enter the above amendments and consider the following remarks. Claims 1-3, 5-16, and 18-22 have been amended to more clearly describe exemplary embodiments of the invention and remain pending in the application. The Applicant respectfully requests further examination and reconsideration of the application in light of the amendments and accompanying remarks.

Notice of Non-Responsive Amendment

The Examiner asserted that the previous amendment was non-responsive and withdrew the claims. Accordingly, the Applicant has amended the claims to distinguish a rail from the gasket described by Nakao. In view of the well known meaning of a rail for deck railing, the Applicant respectfully submits that the gasket of Nakao is non-analogous art. Furthermore, the Applicant respectfully submits that all of the claims comply with 35 U.S.C. §112. In light of the amendments, the Applicant will readdress the rejections from the previous office action.

Rejection Claims 1-3, 5-16, and 18-22 Under 35 U.S.C. §112

The Examiner has rejected Applicant's claims 1-3, 5-16, and 18-22 under 35 U.S.C. § 112, first paragraph, asserting that Applicant fails to comply with the written description requirement by claiming subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art

that the inventor, at the time the application was filed, had possession of the claimed invention.

As seen in Figure 3 and described in at least paragraph [0017], the specification clearly contains disclosure pertaining to a rail comprising a metal substrate. In order to clarify the intended subject matter of the present claims, the Applicant has amended claims 1-3, 5-16, and 18-22 to more clearly describe the subject matter recited therein. As a result of these amendments, Applicant believes it is now clear that a rail is being claimed and that the Applicant had possession of the claimed invention. Consequently, it is respectfully submitted that the Examiner's rejection under 35 U.S.C. 112, first paragraph, is now moot.

The Examiner also rejected Applicant's claims 1-3, 5-16, and 18-22 under 35 U.S.C. 112, second paragraph, asserting that the claims are indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention. The Examiner asserted that the term "rail component" is unclear and renders claims 1, 9, and 14 vague and indefinite. As mentioned in the above remarks, the Applicant believes that the term "rail" in the amended claims is definite from the express language contained in at least paragraph [0017] of the specification and as shown in Figure 3. Consequently, it is respectfully submitted that the Examiner's rejection under 35 U.S.C. § 112, second paragraph, is now moot.

Rejection of Claims 1-3, 5-16, and 18-22 Under 35 U.S.C. § 102(b)

The Examiner rejected claims 1-3, 5-16, and 18-22 under 35 U.S.C. § 102(b) as being anticipated by Nakao (US 5,443,887). Applicant has amended claims 1-3, 5-16, and 18-22 to more clearly describe the subject matter recited therein. As Applicant does not believe Nakao teaches the subject matter of the rejected claims, the rejection is respectfully traversed.

One skilled in the art would not recognize any relationship between a rail and a gasket. In fact, Nakao does not provide any motivation that a rail for deck railing could be successfully made based on the description of a gasket with limited dimensions as described by Nakao (e.g., 1.5 mm thick in Examples 13-20 and 0.5 mm thick in Examples 21 and 22). Thus, the Applicant respectfully submits that Nakao does not provide any support for the rejection. Indeed, the Examiner has not provided any support for any type of deck rail that has qualities that resemble the gasket of Nakao. Furthermore, the gasket of Nakao does not solve any needs relevant to deck railing as a result of its limited specifications.

The Applicant has amended the claims in order to more clearly describe exemplary embodiments of a rail. Nakao, on the other hand, is directed to a composition for gaskets. In view of the above arguments, the Applicant respectfully submits that Nakao in no way teaches or even suggests a rail as set forth in the claims. Therefore, the Applicant respectfully submits that Nakao cannot support the rejection of claims 1-3, 5-16, and 18-22 under 35 U.S.C. § 102(b).

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Conclusion

The Applicant has amended claims 1-3, 5-16, and 18-22. Applicant has also distinguished the subject matter of the claimed invention over the teachings of the reference cited by the Examiner. Therefore, the Applicant respectfully submits that the present application is now in condition for allowance, and such action is earnestly requested. Telephone inquiry to the undersigned in order to clarify or otherwise expedite prosecution of the present application is respectfully encouraged.

Respectfully submitted,

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